

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EDUARDO M. GARCIA,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

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Civil Action No. **3:21-CV-294-L-BN**

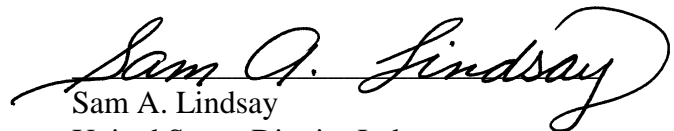
ORDER

On March 25, 2021, the court determined that The Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 5) entered on February 11, 2021, was correct, and accepted them as the court. The court, therefore, overruled Petitioner’s objections to the Report, denied his request to proceed *in forma pauperis*, and ordered him to pay the \$5 filing fee no later than April 15, 2021. Order (Doc. 7). Petitioner was warned that his failure to comply with the court’s order would result in dismissal without prejudice of this action, pursuant to Federal Rule of Civil Procedure 41(b), as a result of his failure to prosecute and comply with a court order. Petitioner did not comply with the court’s March 25, 2021 order (Doc. 7) and failed to pay the \$5 filing fee as directed. Accordingly, the court **dismisses without prejudice** this action, pursuant to Rule 41(b), for failure to prosecute and comply with a court order.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c),

the court **denies** a certificate of appealability.* The court determines that Petitioner has failed to show: (1) that reasonable jurists would find this court’s “assessment of the constitutional claims debatable or wrong;” or (2) that reasonable jurists would find “it debatable whether the petition states a valid claim of the denial of a constitutional right” and “debatable whether [this court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In support of this determination, the court **accepts and incorporates** by reference the Report. In the event that Petitioner files a notice of appeal, he must pay the \$505 appellate filing fee or submit a motion to proceed *in forma pauperis* on appeal.

It is so ordered this 30th day of April, 2021.


Sam A. Lindsay
United States District Judge

* Rule 11 of the Rules Governing §§ 2254 and 2255 Cases provides as follows:

(a) **Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) **Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.